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HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No. 174/2003

Single Bench : Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Applicants Defendants No.4 to 6. :

1. Manishraj Singhania, aged about 26 years, S/o Shri Raj Kamal Singhania.
2. Rishiraj Singhania, aged about 24 years, S/o Shri Raj Kamal Singhania.
3. Rohit Kumar Singhania, aged about 23 years, S/o Shri Lalit Kumar Singhania.

All r/o House no.15/481, Opp. Daga Buildings, Civil Lines, Raipur, Tahsil & District – Raipur (C.G.)

Versus

Non-applicants :

1. Hindustan Petroleum Corp. Ltd., a company incorporated under the Companies Act, 1956, Regional Office, IInd Floor, above Vijay Bank, Kutchery Chowk, Raipur (C.G.) (Plaintiff)
2. Smt. Shirin, aged 52 years, Wd/o Late Shri Santosh Kumar Dubey, r/o 6-Doongaji Colony, Raipur (C.G.)
3. Smt. Dhan, aged 51 years, W/o Dr. Ratan R. Daroga, r/o 4/4, Prasana Park, Behind Meera Society, Shanker Sheth Road, Poona (M.S.)
4. Miss. Feroza, aged 45 years, d/o Late Shri Nawshirwan Doongaji, 4/4 Prasana Park, Behind Meera Society, Shanker Sheth Road, Poona (M.S.)
5. Smt. Anahita, aged 40 years, w/o Dr. Fruyashap Sanjana, r/o 4/7 Prasana Park, Behind Meera Society, Shanker Sheth Road, Poona (M.S.)

(No.2 to 5 L.Rs. of Dfd. No.1)

6. Khudadad Kama, aged 72 years, S/o Rustamji Kama, r/o 91, Goolistan, 34, Bhulabhai Desai Rd, Mumbai-400 026. (Dfd. No.2)
7. Sarsethji, aged about 64 years, S/o Minochar Mowdawala, r/o Spenta Apartment, Plot No.G-8 B.G.Kher Marg, Malbar Hill, Mumbai-400 006 (Dfd. No.3)

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Present:
Shri A.K.Prasad, Counsel for the applicants.
No one appears for non-applicant No.1/plaintiffs.
No one appears for non-applicants No.2,6 and 7 though served.
Non-applicant No.3,4 and 5 are served.

ORAL ORDER
(Passed on 23rd March, 2007)

Heard on admission.

2. The non-applicant no.1/plaintiff-Hindustan Petroleum Corporation Limited filed a suit for specific performance on the basis of an agreement dated 31.12.1962 against one Nawshirwan and 5 other defendants. Notices were issued to the defendants. The report of the process server divulged that Nawshirwan-Defendant No.1 expired on 6.4.99 i.e. prior to the date of institution of suit on 3.8.2000. The non-applicant No.1/plaintiff filed an application under Order 22 Rule 4 and 9 of C.P.C. for bringing the legal representatives of Nawshirwan-defendant No.1 on record along with an application under Section 5 of the Limitation Act on the ground that the plaintiff had knowledge of the death of defendant No.1 Nawshirwan when the report of the process server was received and Nawshirwan being a formal party, the appeal did not abate.

3. Learned 4th Additional District Judge, Raipur allowed the application under Order 22 Rule 4 of the C.P.C. for bringing the Legal Representatives of defendant No.1 on record.

4. It is well settled that no suit would lie against a dead person. In the facts and circumstances of the case, upon knowledge of the factum of death of defendant No.1-Nawshirwan a formal party having taken place prior to the date of suit, the remedy available to the plaintiff was under sub clause (2) of Order 1 Rule 10 C.P.C. The plaintiff ought to have made an application for deletion of the name of defendant no.1 from the array of the defendants and to implead the Legal Representatives as defendants. Be that as it may, the application filed by the Non-applicant No.1/plaintiff under Order 22 Rule 4 and 9 of the C.P.C. in the facts and circumstances of the case, can be construed to be one filed under Order 1 Rule 10 sub-

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clause (2) C.P.C. Ordered accordingly. With the above direction, this Civil Revision stands disposed of.

5. M.(C).P.No.2046/2006 which is an application for vacating stay and I.A.No.3727/2006 for dispensing with attendance of the rest of the non-applicants also stand disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge